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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,296	03/17/2004	Burkhard Stock	71226	3608
23872	7590	02/14/2006		
MCGLEW & TUTTLE, PC P.O. BOX 9227 SCARBOROUGH STATION SCARBOROUGH, NY 10510-9227			EXAMINER NATNITHITHADHA, NAVIN	
			ART UNIT 3736	PAPER NUMBER

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/802,296	STOCK ET AL.	
	Examiner Navin Natnithithadha	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 November 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 and 5-19 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 and 5-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11222005.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Response to Amendment

1. Claims 1, 3, and 6-8 have been amended. Claim 4 has been cancelled. Claims 15-19 have been added. Claims 1-3 and 5-19 are pending.
2. The objections to Specification are WITHDRAWN in view of the Amendment.

Response to Arguments

3. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

4. Claim 1 is objected to because of the following informalities:

An “alcohol sensor” is an essential element of the “breath alcohol measuring device.” However, the “alcohol sensor” has not been affirmatively defined as an element to the structure. The Examiner suggests defining the “alcohol sensor” as a separate element from the mouthpiece, thus the structure of claim 1 should have elements: a holder, an alcohol sensor, and a mouthpiece. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"parallelepiped" is defined as a solid with six faces, each of a parallelogram and each being parallel to the opposite face. It is not clear how the sensor housing 7 in Figure 1 can be defined as having a parallelepiped shape.

6. Claims 8 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted element is a sensor that measures breath alcohol. None of the elements in the body of the claims measure alcohol in breath.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-3 and 5-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over et al, US 4,297,871 A ("Wright"), in view of O'Neil et al, US 6,044,843 A ("O'Neil").

Claims 1 and 5: Wright teaches a breath alcohol measuring device (see col. 1, lines 8-11), comprising: a mouthpiece 12 with a hole 13 for sampling breathing gas for an alcohol sensor 17, 18. Wright does not teach a holder, and the mouthpiece 12 having a trapezoidal cross section and a stop. A "trapezoid" is defined by *Dictionary.com* as "[a] quadrilateral having two parallel sides." However, O'Neil teaches a breath monitoring device comprising: a holder (housing) 5; and a mouthpiece 4 having a trapezoidal cross section (truncated cylinder with generally parallel sides 20, 22) 19, and a stop 21 and positioning pin (cuvette) 2 extending outside the holder 5 when the "trapezoidal" section 19 is in the holder 5 (see fig. 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Wright's breath alcohol measuring device in order to have a more secure fitting between the mouthpiece and the breath measuring device (see O'Neil, col. 3, lines 14-17) and allows the mouthpiece to be sterilized for re-use or disposed after one use (see O'Neil, col. 4, lines 17-20).

Claim 2: Wright teaches a "hole" 13 for taking a breath sample (see fig. 1) is located in a bottom side of the cross section of the replaceable mouthpiece 12. O'Neil

teaches the trapezoidal cross section 19 is “equilateral” (see fig. 1). The bottom side of Wright corresponds to the bottom side of the cross section O’Neil’s trapezoidal cross section 19. Therefore, it would have been obvious for one of ordinary skill in the art to modify the structure of Wright’s device to have O’Neil’s structure in order to have a more secure fitting between the mouthpiece and the breath measuring device (see O’Neil, col. 3, lines 14-17) and allows the mouthpiece to be sterilized for re-use or disposed after one use (see O’Neil, col. 4, lines 17-20).

Claim 3: Wright teaches a holder/sensor housing 5 has a recess (not labeled) shaped to hold the mouthpiece having two parallel faces 7 and 9 (see fig. 1).

Claim 6: Wright teaches “electrochemical alcohol sensors” (electrodes for indicating the quantity of alcohol per unit volume of the breath sample) 17, 18 (see col. 2, lines 43-52) and a “pump” (movable piston) 30 located downstream of the alcohol sensors 17, 18 and providing suction to sample the breathing gas (see fig. 1 and col. 2, line 62, to col. 3, line 15).

Claim 7: Wright teaches a detachable and symmetrical mouthpiece that is capable of being attached at two different positions that are 180° from each other (see fig. 1).

Claim 8: Wright teaches a breath alcohol measuring device (see col. 1, lines 8-11), comprising: a sensor housing 10 with a suction channel 34; and a mouthpiece 12 with a breathing gas passage 11 with a hole 13 for sampling breathing gase. Wright does not teach a holder and the mouthpiece 12 including a portion with surfaces defining a trapezoidal cross section. However, O’Neil teaches a breath monitoring device

comprising: a mouthpiece 4 having a "trapezoidal" cross section (truncated cylinder with generally parallel sides 20, 22) 19 (see fig. 1); and a holder (housing) 5 having a complementary receiver to the trapezoidal cross section 19 (see fig. 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Wright's breath alcohol measuring device in order to have a more secure fitting between the mouthpiece and the breath measuring device (see O'Neil, col. 3, lines 14-17) and allows the mouthpiece to be sterilized for re-use or disposed after one use (see O'Neil, col. 4, lines 17-20).

Claims 9-14: The subject matter of these claims are taught by Wright in view of O'Neil as discussed above for claims 1-3 and 5-7.

Claims 15-19: Wright teaches a breath alcohol measuring device (see col. 1, lines 8-11), comprising: a mouthpiece 12 with a breathing gas passage 11 with a hole 13 for sampling breathing gas; and a sensor housing 10 with a suction channel 34. Wright does not teach the mouthpiece 12 including a portion with a trapezoidal cross section and a holder defining a groove with open longitudinal ends. However, O'Neil teaches a breath monitoring device comprising: a mouthpiece 4 having a "trapezoidal" cross section (truncated cylinder with generally parallel sides 20, 22) 19 (see fig. 1); and a holder (housing) 5 having a complementary receiver to the trapezoidal cross section 19, a groove, and open longitudinal ends (see fig. 1). Furthermore, O'Neil teaches a stop 21, a sampling hole 13, the gas passage 11 is parallel to the groove of the holder 5, and the mouthpiece 4 longitudinally extends beyond the holder/housing 5 in both

longitudinal directions (see fig. 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Wright's breath alcohol measuring device in order to have a more secure fitting between the mouthpiece and the breath measuring device (see O'Neil, col. 3, lines 14-17) and allows the mouthpiece to be sterilized for re-use or disposed after one use (see O'Neil, col. 4, lines 17-20).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6,824,520 B2, US 6,176,833 B1, US 5,789,660 A, and US 5,518,002 A additionally teach the subject matter of the Applicant's claims. The Examiner suggests reviewing these patents in responding to this Office Action.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha
Patent Examiner
GAU 3736

2/6/06



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